

REMARKS

By this Amendment, claim 1 is amended for grammatical purposes and claim 16 is canceled without prejudice or disclaimer. Claims 1-15 are pending for examination.

Rejections Under 35 U.S.C. § 112

In the Office Action of February 25, 2004, claims 1-16 were rejected as not in compliance with the written description requirement of 35 U.S.C. § 112, in that the application “doesn’t have support for ‘a single blow molding operation’”. Applicant respectfully traverses this rejection and in response directs the Examiner’s attention to the second paragraph of page 7 of the application as filed, wherein U.S. Patent No. 4,228,122 to Hammes is incorporated by reference. The Manual of Patent Examining Procedure states:

Instead of repeating some information contained in another document, an application may attempt to incorporate the content of another document or part thereof by reference to the document in the text of the specification. The information incorporated is as much a part of the application as filed as if the text was repeated in the application, and should be treated as part of the text of the application as filed.

M.P.E.P. § 2163.07(b). As the Examiner notes in the Office Action, “Hammes . . . teach[es] a cylindrical side wall and a one-piece integrally molded structure molded in a single blow molding operation.” Clearly, based on the incorporation by reference of Hammes ‘122, the Applicant had possession of “a single blow molding operation” at the time the application was filed. As a result, Applicant respectfully requests that this rejection be withdrawn.

As for claim 16, which was also rejected under 35 U.S.C. § 112 as not having written description support for “stackable drums,” Applicant directs the Examiner’s attention to the last paragraph of page 2 of the application as filed, wherein it states: “[t]he chime at the top of the drum also provides protection to the top ports and connectors, particularly when the drums are stacked.” Clearly, at the time the present application was filed, Applicant was in possession of the concept that drums may be, and often are, stacked. Thus, Applicant submits the application

as filed has written description support for “stackable drums.” Solely to advance the prosecution of this application and without prejudice or disclaimer of any sort, Applicant has canceled claim 16. As a result, Applicant respectfully submits that this rejection is moot, and requests that it be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 1-3, 6, 7 and 10 were rejected as obvious over McKenzie ‘570 in view of Przytulla ‘049 and Hammes ‘122. Applicant respectfully traverses these rejections.

With regard to McKenzie ‘570, Applicant submits that McKenzie ‘570 does not teach or suggest a protective chime, but instead discloses a sleeve 12 with handles that is separately attached to the top of the drum to receive another drum for stacking. The bottom of the upper drum fits within the sleeve and rests on the upper wall of the container below. See McKenzie ‘570 at column 3, line 58 through column 4, line 15. A recess is provided in the bottom of the upper container to receive the closure member of the lower container. See Id. at column 4, line 16 through 27.

McKenzie ‘570 teaches away from the protective chime of the present invention by teaching the insertion of the bottom of another drum within sleeve 12, where it may contact and damage a closure member in place on the drum. Such condition would occur, for example, if a top drum in the stack is rotated 180 degrees and inserted into sleeve 12 of a lower drum with recess 17D overlying second opening 26 when a closure 29 is in place on first opening 25.

Further, Applicant respectfully traverses the assertion in the Office Action that McKenzie ‘570 discloses a drum “wherein the distance from the top of the first fitting to the top edge of the chime is sufficient such that components extending 1 ¼ inches above the top of the first fitting is (are) below the top edge of the chime” based on the disclosure in McKenzie ‘570 that the drum may have a total height of 20 inches with a capacity of 55 liters, and on the relative proportions of the drawings. “Patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.”

Hockerson-Halberstadt, Inc. v. Avia Group International, Inc., 222 F.3d 951 (Fed. Cir. 2000). Applicant notes that the disclosure of McKenzie '570 is entirely silent regarding the dimensional relationship between the fitting locations and the top of the sleeve. A teaching or suggestion of such a relationship is not properly gleaned from measurement of the drawings of McKenzie '570, which are not said to be drawn to scale. As a result, Applicant respectfully submits that McKenzie '570 simply does not teach or suggest the unique relationship between the position of the fittings and the top of the tall protective chime of the claimed invention.

Neither Pryztulla '049 nor Hammes '122 contains any teaching or suggestion whatsoever of the positional relationship between fittings on the top of the drum and the top of the chime claimed in the present invention. In fact, Pryztulla '049 teaches that the "carrying and transport ring 2" is to be located below the end face 3 of the drum (Pryztulla '049, col. 3 ll. 17-19), thereby teaching away from locating the top of a chime above the top wall and fittings in the top wall as in the claimed invention. As a result, since the references applied by the Examiner do not teach or suggest all elements of the claimed invention, Applicant respectfully submits that the Examiner has not made out a prima facie case of obviousness based on these references, and requests that the rejections be withdrawn.

Applicant further traverses the assertion that it would have been obvious to provide a 1 ¼ inch height difference between the top edge of the chime and the top of a first fitting as a matter of "engineering design choice as an increase in chime height creates greater overlap with the bottom of a drum stacked directly thereabove as motivated by an increase in the stability of the stack." Applicant notes that stacking stability is merely one of many competing design considerations. No reference has been cited to support an assertion that one of skill in the art would necessarily prefer stacking stability over other design considerations that may counsel the desirability of lower chime heights. In the event this assertion is to form the basis of a rejection of claims, Applicant respectfully requests that the Examiner cite a supporting reference. See M.P.E.P. 2144.03(C).

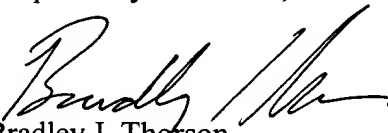
Claims 4, 5, 8, 9, and 11-15 were rejected as obvious over the combination of McKenzie '570, Hammes '122, Prztulla '049 and admitted prior art within the application. Applicant traverses these rejections for the same reasons as fully set forth hereinabove, and respectfully requests they be withdrawn.

Claims 1-15 were rejected for obviousness type double patenting over claims 1-18 of U.S. Patent No. 6,045,000. Applicant submits herewith a terminal disclaimer properly executed by an attorney of record for the common Applicant, and respectfully submits that this terminal disclaimer obviates these rejections.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Although Applicant's March 9, 2004, request for an in-person interview with the Examiner on March 30, 2004, was refused, Applicant urges a discussion if possible to obviate the need for an appeal or reduce the number of issues on appeal in the event that any issues remain to be resolved after this Amendment. Accordingly, the Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,


Bradley J. Thorson
Registration No. 52,288

Customer No. 24113
Patterson, Thunte, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-5756